

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
GORDON GOLDY,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 938

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a cancellation of Ground Water Permit No. 7555, having come on regularly for formal hearing on the 9th day of April, 1976, in Wenatchee, Washington, and appellant Gordon Goldy appearing pro se, and respondent Department of Ecology appearing through its Assistant Attorney General Joseph J. McGoran with Ellen D. Peterson, hearing examiner, presiding, and the Board having considered the exhibits, records and files herein and having reviewed the proposed Findings of Fact, Conclusions of Law and Order of the presiding officer, and the presiding officer having served said proposed Order upon all parties

1 herein by certified mail, return receipt requested, and twenty days having
2 elapsed from said service; and

3 The Board having received no exceptions to said proposed Findings of
4 Fact, Conclusions of Law and Order, and the Board being fully advised
5 in the premises, now therefore,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
7 Findings of Fact, Conclusions of Law and Order dated the 3d day of May,
8 1976, and incorporated by reference herein and attached hereto as
9 Exhibit A, is adopted and hereby entered as the Board's Final Findings
10 of Fact, Conclusions of Law and Order herein.

11 DONE at Lacey, Washington, this 2d day of June, 1976.

12 POLLUTION CONTROL HEARINGS BOARD

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14 CHRIS SMITH, Chairman

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16 W. A. GISSBERG, Member
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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

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FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a cancellation of Ground Water Permit No 7555, came on regularly for hearing on April 9, 1976, in Wenatchee, Washington. Appellant Gordon Goldy appeared pro se, Assistant Attorney General Joseph J. McGoran represented respondent Department of Ecology, Ellen D. Peterson, hearing officer with the Pollution Control Hearings Board presided.

Having reviewed the exhibits and heard the testimony, the presiding officer makes these

EXHIBIT A

FINDINGS OF FACT

I.

On February 10, 1966, Gordon Goldy applied for a ground water permit to appropriate 800 gallons of water per minute, 320 acre feet per year, for the irrigation of eighty acres in Palisades, Washington. A permit for such an appropriation was granted by the Department of Ecology on August 8, 1966. The source of the water under the permit was to be a well on appellant's property, construction of which was to commence by August 1, 1967, be completed by August 1, 1968, with application of water therefrom by August 1, 1969

II.

On October 16, 1975, the Department of Ecology issued an Order of Cancellation of Permit to Mr. Goldy for failure to timely complete construction of his well from which Mr. Goldy appealed to the Pollution Control Hearings Board on November 18, 1975.

Between August 8, 1966, the date the permit was issued, until its cancellation by the Department of Ecology on October 16, 1975, five extensions were granted to Mr. Goldy for compliance with the construction schedule. Throughout this period Mr. Goldy was unable to secure the necessary financing from the Farmers Home Administration and to date has completed less than five percent of the well's construction

III.

Although encouraged by a more positive attitude toward his financial situation demonstrated recently by the Farmers Home Administration, Mr. Goldy could give the Department of

Ecology no assurance that funds for construction of his well would be forthcoming in the foreseeable future.

IV.

Neither in its records nor through its witnesses did the Department of Ecology question the good faith of Mr. Goldy in pursuing to the best of his ability the execution of the permit, indeed, the Department of Ecology stated repeatedly that cancellation under the instant permit would not be considered prejudicial to appellant if in future he reapplies for a ground water permit.

V.

Any Conclusion of Law hereinafter stated which may be deemed a Finding of Fact is hereby adopted as such.

From these Findings the presiding officer comes to these

CONCLUSIONS OF LAW

I.

RCW 90.03.320 is applicable to the facts of this case:

CONSTRUCTION WORK. Actual construction work shall be commenced on any project for which permit has been granted within such reasonable time as shall be prescribed by the supervisor of water resources, and shall thereafter be prosecuted with diligence and completed within the time prescribed by the supervisor. The supervisor, in fixing the time for the commencement of the work, or for the completion thereof and the application of the water to the beneficial use prescribed in the permit, shall take into consideration the cost and magnitude of the project and the engineering and physical features to be encountered, and shall allow such time as shall be reasonable and just under the conditions then existing, having due regard for the public welfare and public interests affected: and, for good cause shown, he shall extend the time or times fixed as aforesaid, and shall

grant such further period or periods as may be reasonably necessary, having due regard to the good faith of the applicant and the public interests affected. If the terms of the permit or extension thereof, are not complied with the supervisor shall give notice by registered mail that such permit will be canceled unless the holders thereof shall show cause within sixty days why the same should not be so canceled. If cause be not shown, said permit shall be canceled.

II.

Despite the good faith exhibited by appellant throughout this period, the public interest involved in prohibiting a reservation of water for future use would be compromised if, without any guarantee of expedient construction, a further extension of compliance time were to be granted to the appellant.

III

The respondent Department of Ecology exercised its discretion in this matter in a reasonable manner and procedural requirements as to notice to the permittee were consistently followed.

IV.

Nothing herein shall be deemed to be prejudicial to appellant's future filing of an application for a ground water permit if he is able to improve his financial prospects for well construction. Such permit, however, if granted, would have a priority date as of the date of the new application and would not revert back to the date of the permit which is the subject of this appeal.

V.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

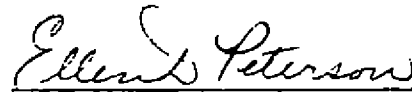
1 Therefore, the presiding officer makes and enters this

2 ORDER

3 The Order of Cancellation of Permit issued by the Department
4 of Ecology in this matter is affirmed.

5 DATED this 3^d day of May, 1976.

6 POLLUTION CONTROL HEARINGS BOARD

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8 ELLEN D. PETERSON, Presiding Officer
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26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER